



Memorandum

TO: PLANNING COMMISSION
**SUBJECT: SECONDARY UNIT PILOT
PROGRAM AND PARK IN LIEU
FEE EXEMPTION**

FROM: Joseph Horwedel
DATE: September 18, 2007

Approved

Date

COUNCIL DISTRICT: City-Wide
SNI AREA: All

RECOMMENDATION

It is recommended that the Planning Commission recommend City Council adoption of ordinances extending the Secondary Unit Pilot Program with revised parameters for six months or until 100 applications for secondary units have been accepted, whichever occurs first, and extending the park in lieu fee exemption for the term of the Secondary Unit Pilot Program.

OUTCOME

Approval of the proposed secondary unit ordinance and park in lieu fee exemption would allow the continued production of secondary units while the City tests revised secondary unit development parameters and undertakes additional analysis and public outreach regarding what park impact fee, if any, would be appropriate should the Council adopt a permanent secondary unit ordinance.

EXECUTIVE SUMMARY

The Secondary Unit Pilot Program was approved by the City Council in November of 2005 to test the allowance of secondary “granny” units on single-family lots subject to specific development parameters. This program has run for approximately 20 months, and as of July 20, 2007, had resulted in 67 secondary unit applications and 14 constructed units. Staff has now completed an evaluation of the Pilot Program and community outreach regarding a permanent secondary unit program.

The results of the Pilot Program to this point and surveys of secondary unit property owners and adjacent residents, indicate that secondary units provide an important alternative for single-family homeowners seeking to provide housing for elderly parents or other family members or

the additional income of a rental unit and that the units approved through the Pilot Program do not appear to have generated significant concern from adjacent property owners or resulted in noticeable impacts on surrounding neighborhoods. Results of the analysis and community outreach suggest that the park fees otherwise applicable to attached and detached secondary units (in the absence of the current exemption) are relatively high when compared to the construction costs of secondary units and that such fees could significantly inhibit the future production of these units. The results also suggest that, although the parameters tested through the Pilot Program have generally worked well, some changes would be beneficial.

Additional analysis of the relationship between park impact fees and secondary units is necessary in order to determine if a reduced park fee is justified and what amount would be appropriate; this analysis can best be accomplished in the context of the process currently underway to evaluate potential modifications to the current Schedule of In-Lieu Fees and Credits. The proposed modifications to the Schedule of In-Lieu Fees and Credits is expected to be agendaized for the Council's consideration this Fall, with changes to the fees and credits scheduled to take effect in February, 2008. Extension of the Pilot Program and park impact fee exemption for an additional six months would allow staff to continue to accept and process secondary unit applications while the proposed reduced park fee is analyzed and allow the issue of a permanent secondary unit ordinance to move forward in conjunction with the changes to the Schedule of In-Lieu Fees and Credits.

Extension of the Pilot Program would also allow for testing of revised program parameters. These revised parameters include a reduced 15-foot rear setback for single-story secondary units, elimination of the required setback between a secondary unit and a detached garage, a two-foot increase in allowed height and a minor clarification regarding the restriction on windows overlooking adjacent properties.

BACKGROUND

In November of 2005, the City Council approved an ordinance establishing the Secondary Unit Pilot Program to allow secondary "granny" units on single-family lots subject to specific development parameters. This action responded to State legislation that required the City to consider allowing secondary living units in single-family zoning districts without a discretionary permit. The pilot program as originally approved by the Council, was to run for one year or until 100 secondary unit applications had been submitted. In February of 2006, the Council approved an ordinance exempting secondary units approved through the pilot program from park impact fees.

When only 36 applications for secondary units had been accepted in the first 11 months of the Pilot Program, the Council extended the program and park fee exemption for an additional 6 months, to June 30, 2007, to allow staff to accept and process additional secondary unit applications. In May of 2007, the Council approved an additional extension of the program and fee exemption to October 31, 2007 to allow staff to continue to accept and process applications

while evaluating the program and conducting community outreach regarding the issue of a permanent secondary unit ordinance.

Staff has now completed a thorough evaluation of the Pilot Program and has undertaken community outreach regarding a permanent secondary unit program, as summarized in the analysis section below. Staff is concerned that the park impact fees that would otherwise be applicable to attached and detached secondary units (in the absence of the Pilot Program fee exemption) are relatively high when compared to the construction costs of secondary units and that such fees could significantly inhibit the future production of these units. Additional analysis is needed to determine whether a reduced fee is justified for a permanent secondary unit program. Staff believes that this analysis can best be accomplished in the context of the process currently underway to evaluate potential modifications to the Schedule of In-Lieu Fees and Credits which is expected to be agendaized for Council consideration this Fall. Such fees would become effective in early February 2008. An additional six-month extension of the Pilot Program would allow the permanent secondary unit ordinance to be considered by the Council in conjunction with changes to the Schedule of In Lieu Fees and Credits and allow staff to continue to accept and approve secondary unit applications while this fee issue is being reviewed.

The Parks and Recreation Commission considered the results of the Secondary Unit Pilot Program at its meeting of September 5, 2007. The Commission voted to support a permanent secondary unit ordinance with a reduced park impact fee and asked that staff return to the Commission with a specific recommendation regarding the appropriate secondary unit park fee. On September 13, 2007, the Housing and Community Development Advisory Commission considered staff's recommendation for a six-month extension of the Pilot Program and park impact fee exemption. The Commission voted to support extension of the Pilot Program and park fee exemption. The City Council Community and Economic Development Committee is scheduled to consider the proposed ordinance to extend the Pilot Program and fee exemption on September 24, 2007, and the Neighborhood Services and Education Committee will consider the proposal on October 11, 2007.

Summary of Pilot Program Requirements and Process

The Secondary Unit Pilot Program has been in operation for approximately 20 months. This pilot program came in response to State legislation adopted in 2004, which mandated that secondary units be approved through a "ministerial" process that does not include discretionary decision-making or public hearings. The City Council approved the parameters summarized in Table 1. under this limited pilot program, in an attempted to balance the objective of providing flexibility for provision of small secondary housing units in single-family neighborhoods with the concern about adverse impacts to adjacent properties and the residential neighborhoods.

The Pilot Program provides for approval of secondary units through a *Secondary Unit Permit*, a non-discretionary building permit that includes review by Planning staff for conformance with the requirements of the program. Excluding any park fee, City permits, fees and development taxes for Secondary Units have totaled approximately \$5,000 to \$6,000 per unit. Secondary

Units are also subject to school impact fees of up to \$1,500 collected by the applicable school district/s. The processing time for Secondary Unit Permits has ranged from one day to several months, depending on the quality of the plans submitted and the complexity of the project.

Table 1. Secondary Unit Pilot Program Parameters

Applicable Zoning Districts	All R-1 Districts and PD Districts with R-1 standards
Minimum Lot Size	Attached unit - 6,000 sq. ft. Detached unit – 8,000 sq. ft.
Maximum Unit Size	600 sq. ft.
Bedrooms – Maximum Number and Size	One bedroom is required and is maximum allowed. 400 sq. ft.
Maximum Storage Space	60 sq. ft.
Required Parking	One space (outside front and side setbacks)
Setbacks – Attached Unit	Same as primary dwelling.
Setbacks – Detached Unit	Same as primary dwelling except that façade of secondary unit must be set behind that of primary residence. Units must be separated from any other structure by 6 feet.
Height	16 feet maximum 12 feet average
Design Criteria	Exterior materials and roof pitch must match existing house. Front door cannot be located on same façade as that of the primary residence. Windows cannot have views of adjacent properties.
Ownership	Property owner must certify that he/she occupies existing house at the time of application.

ANALYSIS

Staff has now completed an evaluation of the pilot program that includes (1) an analysis of program data, (2) a phone survey of property owners with approved or constructed secondary living units, (3) a survey of neighbors living adjacent to newly completed secondary units, and (4) a series of meetings to discuss the possibility of a permanent secondary unit program with the community.

Analysis of Secondary Unit Program Data

As of July 20, 2007, staff had accepted a total of 67 applications for new Secondary Units, significantly fewer than the maximum number of 100 authorized under the pilot program. Applications have been submitted at a relatively steady rate over the past 18 months, averaging 3 to 4 per month. Table 2 provides a summary of the status of the applications currently on file for secondary units.

Table 2. Secondary Unit Application Status as of 7-20-07

	Final Inspection	Under Inspection	Permit Ready for Issue	Tech. Review	Expired	Total
Detached Units	9	14	2	7	4	36
Attached Units	5	14	1	9	2	31
Total Units	14	28	3	16	6	67

The distribution of secondary unit applications does not appear to be closely related to the number of lots that meet the minimum lot area requirements for an attached secondary unit (6,000 square feet and greater). As indicated in Table 3, a disproportionate number of applications have been filed for properties located in District 6 (21 or approximately one third of the citywide total) and in District 8 (12 or approximately 18 percent of the total). Secondary units have been filed in all Council Districts except District 10. District 9, which includes the largest proportion of eligible lots, (approximately 17 percent of the citywide total) generated only 4 applications, and District 10, which has the second largest number of eligible lots, had none.

Table 3. Eligible Lots and Second Unit Applications by Council District

Council District	No./Percent Lots 6000 sq.ft. +	No. Detached Unit Applications	No. Attached Unit Applications	Total Applications/Percent
CD 1	12,081 (11.3%)	5	2	7 (10.4%)
CD 2	11,524 (10.7%)	2	2	4 (5.9%)
CD 3	11,524 (10.7%)	2	1	3 (4.5%)
CD 4	9,652 (9.0%)	2	3	5 (7.5%)
CD 5	7,822 (7.3%)	2	6	8 (11.9%)
CD 6	12,458 (11.6%)	12	9	21 (31.3%)
CD 7	5,077 (4.7%)	1	2	3 (4.5%)
CD 8	12,676 (11.8%)	8	4	12 (17.9%)
CD 9	18,464 (17.2%)	2	2	4 (5.9%)
CD10	16,219 (15.1%)	0	0	0 (0.0%)
Total	107,327 (100%)	36	31	67 (99.8%)

Overall, lots for which secondary unit applications have been submitted are significantly larger than the minimum lot sizes required under the pilot program. As indicated in Table 4, this is true for both attached and detached units, although the trend is more pronounced for lots with detached units. Eighty-nine percent of the lots proposed for detached units exceed the minimum lot size by 1,000 square feet or more. Lot sizes for attached units are significantly smaller than for detached units, but with an average area of 8,056 square feet, and a median of 7,500 square feet, they remain well above the required minimum lot area of 6,000 square feet. These findings suggest that the minimum lot size set forth under the Pilot Program has not been a primary constraint for the production of secondary units under the Pilot Program.

Table 4. Second Unit Pilot Program Lot Size

	Required Minimum Lot Area (sq.ft.)	Total Applications	Average Lot Area (sq.ft.)	Median Lot Area (sq.ft.)	Applications for Lots over 9,000 sq. ft. (Percent)	Applications for Lots over 12,000 sq.ft. (Percent)
Detached Units	8,000	36	16,060	11,446	89%	42%
Attached Units	6,000	31	8,056	7,500	23%	6%
All Units	n/a	57	12,357	9,583	58%	25%

Staff's experience in assisting customers in both the preliminary review and application processes and the results of the property owner survey, suggest that the required parking space and setbacks are greater constraints in achieving conformance with Pilot Program requirements than lot size. Providing the required parking space is not feasible for a large number of existing lots where placement of the existing house blocks vehicular access to the rear yard and allows insufficient room for a parking space in front of the house, outside of the front setback.

Secondary Unit Property Owner Survey

Between May and July of 2007, staff attempted to survey by phone 35 property owners whose secondary units were approved and under construction. Staff was successful in completing a phone survey with 21 of these property owners, 10 of which had completed construction of a secondary unit. Results of the survey are included in the attached *Secondary Unit Phone Survey Results*; key responses are summarized below.

Use of the Secondary Unit. A large majority of the property owners surveyed (82 percent) responded that their secondary unit was being used, or would be used when complete, as a residence for a family member, a pool house/recreation room or a guest house. Only 19 percent indicated that their units would be used as a residence for a non-family member. Although the number of secondary units rented to a non-family member may increase over time, the survey indicates that most of the approved units are not proposed for this purpose.

Cost of Secondary Unit Construction Project. The reported total cost of the units varied greatly, with 41 percent reporting costs between 0-\$75,000 and 12 percent of respondents saying the cost exceeded \$200,000. Several property owners whose units cost less than \$75,000, volunteered that the costs were reduced because they completed some or all of the work themselves or were converting existing building area.

Parking. In regard to the eight completed units that are now occupied as residences, seven respondents reported that the resident of the unit owned a car and six indicated that the required parking space was in regular use.

Challenges Encountered in the Design of Respondent's Secondary Unit. The most common reported challenge was the difficulty of meeting the required setbacks. The second most frequent response was that the process for obtaining a permit was difficult. Other responses indicated that the required parking space was difficult to provide, that the restriction on the location of the front door was challenging and the height limit was difficult to meet. One property owner explained that the requirement that the roof match the steep pitch of the existing tudor-style house had made it difficult to conform to the height limit.

Proposed Changes to the Pilot Program. The most frequent response to the question about what, if any, aspect of the pilot program they would like to see changed, was "allowing larger secondary units." Another frequent response proposed elimination of the parking requirement or proposed that the required parking be allowed in the front setback.

Adjacent Resident Survey

Staff received responses at the community meeting that it should solicit feedback from neighbors of secondary units. In response, staff mailed the attached *Adjacent Neighbor Survey* to 79 residents of property located adjacent to or across the street from 13 completed secondary units. An accompanying letter requested that the hard copy survey be completed and returned by mail or that the resident complete an on-line version. Only two residents completed the survey. One was very supportive of the program, but was concerned about the potential for rental of secondary units; the other strongly opposed the program due to concern about parking and indicated that there was some reduction in the availability of on-street parking. The low response rate may be an indication that these secondary units are not of great concern to their adjacent neighbors.

Community Input

A total of approximately 95 people attended five community meetings held to seek input regarding the secondary unit pilot program and the possibility of a permanent secondary unit ordinance. The majority of those in attendance expressed support for a permanent secondary unit program, citing such benefits as the flexibility secondary units would offer families seeking to provide for aging or disabled family members, the additional housing units the program would produce, and the income such units would provide for households seeking to make mortgage payments. Some stipulated that the program should be designed to prevent impacts on single-family residential neighborhoods; a minority strongly opposed any permanent secondary unit program, indicating that such a program would lead to overcrowding, parking impacts, loss of open space and an influx of renters into single-family neighborhoods.

Community members also provided input in regard to the appropriate parameters for a permanent secondary unit ordinance. Homeowners who had obtained approval of a secondary unit or were exploring the possibility of such a unit requested that more flexibility be provided in regard to setbacks, unit size, parking, design compatibility, and limitations on windows facing adjacent properties. A few advocated a reduction in the minimum lot size; however, others felt that such a reduction would give homeowners false expectations and that smaller lots would not

be able to meet setback and parking requirements. A contractor pointed out that the prohibition on windows overlooking adjacent properties should apply only where adjacent properties are residential. Others supported retention of the existing parking and setback requirements to ensure that the new units did not result in adverse impacts on adjacent properties and expressed concern that secondary units not be used as a means of avoiding the subdivision process or of increasing the capacity of residential care or service facilities allowed by right in a single-family residence.

Regarding the issue of park impact fees for secondary units, most feedback from the community meetings indicated that the park impact fee exemption applicable under the Pilot Program should be extended to the permanent secondary unit program; however, others favored a reduced fee that would not place an undue burden on a small secondary unit.

Written correspondence received from the public on the secondary unit program is attached. This correspondence includes both comments of support and opposition to a permanent secondary unit ordinance. Concern regarding existing parking shortages and the impact of secondary units on parking is repeated in several of the comments.

Recommended Revisions to the Pilot Program Parameters

The results of the Pilot Program to this point, indicate that secondary units provide an important alternative for single-family homeowners seeking to provide housing for elderly parents or other family members or the additional income of a rental unit and that the units approved through the Pilot Program do not appear to have generated significant concern from adjacent property owners or resulted in noticeable impacts on surrounding neighborhoods. Although the parameters tested through the Pilot Program have generally worked well, the results of the Pilot suggest that some changes would be beneficial. Following is a brief discussion of recommended changes to the secondary unit parameters, summarized in Table 5, that staff believes should be tested through an extended Pilot Program.

Unit Size. The proposed increase in the maximum size of the secondary units to 650 square feet for lots between 9,001 and 10,000 square feet and to 700 square feet for lots over 10,000 square feet responds to property owner feedback that the current allowed area is too small and acknowledges the number of large lots proposed for secondary units. This change retains the one-bedroom limit, ensuring that the unit remains subordinate to the primary residence while providing greater flexibility for the design of units on large lots.

Setbacks. The proposed reduction in the rear setback from 20 to 15 feet for single-story units is consistent with the setback exception of Title 20 (Section 20.30.280) applicable to single-story additions to existing single-family residences. The proposed reduced setback is intended to provide greater flexibility in siting secondary units, while retaining the principle that such units should conform to setbacks applicable to the primary residence. In addition, staff is proposing that the current setback of six feet between a secondary unit and a detached garage be eliminated and that the secondary unit be allowed to be attached to such a garage, provided it conforms to

the property-line setbacks applicable to the secondary unit. This provision allows greater efficiency in the use of space so long as the perimeter setbacks are maintained.

Height and Windows. The proposed two-foot increase in both maximum and average height responds to the concern that current roof pitch requirements (pitch must match that of primary residence) may conflict with the current height restriction. The additional height will allow greater flexibility in achieving a steep roof pitch, while maintaining a relatively modest height for these small structures. Proposed clarification that restrictions on windows overlooking adjacent properties apply only to adjacent residential properties ensures that this provision achieves the objective of protecting residential neighbors without being unduly restrictive.

Table 5. Proposed Changes to Secondary Unit Pilot Program Parameters

	Existing Pilot Program Parameters	Recommended Pilot Program Parameters
Applicable Zoning	All R-1 Districts and PD Districts with R-1 standards	No change.
Minimum Lot Size	Attached unit - 6,000 sq. ft. Detached unit – 8,000 sq. ft.	No change.
Maximum Unit Size	600 sq. ft.	≤ 9,000 sq.ft. lot 600 sq.ft. 9,001 to 10,000 lot 650 sq.ft. ≥10,000 lot 700 sq.ft.
Bedrooms – No. and Size	One bedroom required and maximum allowed. 400 sq. ft. maximum	No change.
Storage	60 sq. ft. maximum	No change.
Required Parking	One space (outside front and side setbacks)	No change.
Setbacks – Attached Unit	Same as primary dwelling.	No change except reduction of rear setback from 20 to 15 feet for single-story unit
Setbacks – Detached Unit	Same as primary dwelling except that façade of secondary unit must be set behind that of primary residence. Units must be separated from any other structure by 6 feet.	No change except reduction of rear setback from 20 to 15 feet for single-story unit
Height	16 feet maximum 12 feet average	18 feet maximum 14 feet average
Design Criteria	Exterior materials and roof pitch to match existing house. Front door cannot be on same façade as that of primary residence. Windows cannot have views of adjacent properties.	No change except windows cannot have views of adjacent properties with existing or planned residential uses.
Ownership	Property owner must certify that he/she occupies existing house at the time of application.	No change.
Detached Garage	Secondary unit cannot be attached to detached garage.	Secondary unit can be attached to detached garage if both conform to setbacks required of secondary unit.

Illegal Units

On June 7, 2004, Code Enforcement suspended enforcement of illegal second units pending a final decision by the City Council on the issue of a permanent secondary unit ordinance. Since adoption of the Pilot Program, the property owner of an illegal second unit that meets the Pilot Program requirements has been referred to the Planning Division and encouraged to submit an application to legalize the unpermitted secondary unit. Property owners whose units do not meet current requirements have been required to maintain their units in a vacant condition pending final action by the Council regarding a permanent secondary unit ordinance. Secondary units that could not be legalized due to substandard construction or failure to meet minimum Housing Code standards, such as ceiling heights or secondary egress requirements, have been ordered to be reverted to original design and configuration. Currently, 134 secondary units have been vacated, and remain vacant, pending final action by the Council on the secondary unit issue.

Only two secondary unit applications have been submitted during the Pilot Program to legalize existing unpermitted secondary units, neither of which has been approved. One of these permits is pending resolution of other code enforcement issues on the property, and the other was submitted fairly recently and is still in process.

Code Enforcement believes that the relatively few number of applications to legalize unpermitted secondary units is due to a number of factors:

- Unpermitted secondary units do not generally conform to minimum Housing or Building Code requirements;
- Unpermitted secondary units are often constructed to provide low cost housing for extended family members, and the cost to legalize the unit is beyond the means of the property owner;
- Residents of illegal secondary units do not traditionally file complaints due to the need for affordable rental housing and few alternatives to meet there housing needs.

Housing Department and Planning, Building and Code Enforcement Department staff will begin reviewing unpermitted secondary units to develop a strategy for addressing these units and any potential future displacements resulting from illegal units unable to meet the adopted standards.

PUBLIC OUTREACH/INTEREST

- ☐ **Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
- ✓ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.

- ☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach.

Community meetings regarding the results of the pilot program and the issue of a permanent secondary unit ordinance were held at the Willow Glen Baptist Church on May 31, 2007, at the Alum Rock Library on July 25, 2007, at the Southside Community Center on July 26, 2007 and at the West Valley Branch Library on August 16, 2007. On June 20, 2007, staff attended a meeting of the Winchester NAC to discuss the results of the Secondary Unit Pilot Program and receive input and on July 17, 2007 staff discussed the pilot program with the Neighborhood Roundtable. Notices of the community meetings were emailed to a secondary unit interest list, a citywide list of neighborhood associations, Strong Neighborhood Initiative groups and the Neighborhood Roundtable contact list, and were posted on the City's website. Public input received at these meetings is summarized in the analysis section of this memorandum.

COORDINATION

This memo has been coordinated with the Department of Parks, Recreation and Community Services and the City Attorney's Office.

CEQA

The proposed secondary unit ordinance is exempt pursuant to Section 15282(h) of the California Public Resources Code, File No. PP07-184.

JOSEPH HORWEDEL
Director, Department of Planning,
Building, and Code Enforcement

For questions please contact Carol Hamilton at 535-7837.